DOCKET NO: HHD LND CV 17 6077158S	:	SUPERIOR COURT
BRISTOL-MYERS SQUIBB COMPANY	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
WALLINGFORD PLANNING & ZONING COMMISSION	:	MAY 31, 2018

MEMORANDUM OF DECISION

Bristol-Myers Squibb Company ("original plaintiff"), appealed from a decision of the defendant, Wallingford Planning & Zoning Commission ("Commission"), approving an application of the Wallingford Economic Development Commission ("EDC") to amend the Wallingford Zoning Regulations ("Regulations") by removing "educational, religious and philanthropic uses" from the IX and the I-5 industrial zones. Evidence of aggrievement and oral argument took place on December 7, 2017. The final brief was filed on November 20, 2017.

On March 23, 2018, an entity known as 5 Research Parkway Wallingford, L.L.C. ("subsequent plaintiff") moved to be substituted for the original plaintiff on the basis that it had acquired fee title to the property formerly owned by the original plaintiff. On April 20, 2018 the parties stipulated that the subsequent plaintiff could be substituted and the court would have 120 days from April 18, 2018 to render a decision on the merits.

I. Facts

The original plaintiff is an international pharmaceutical company which, at the time of the trial, owned 180 acres of land ("the property") in Wallingford. The property is located within the Industrial Expansion (IX) District which, prior to the zoning amendment at issue in this case, permitted the original plaintiff to develop its property for uses which included "Educational,

Mailed to Pullman & Comley
Robinson & Cole
Wallingford Corp Counsel

139.00

religious or philanthropic." The property consists of several buildings where the original plaintiff conducted research and development. The balance of the property is characterized by steep slopes and significant wetlands. The acreage which can be developed is less than one-half of the total site.

In 2016 the original plaintiff began efforts to sell the property in preparation for leaving the state in late 2018. In late 2016 and early 2017, the plaintiff informed the EDC and the mayor about its attempts to sell the property. Despite diligent efforts, the original plaintiff had been unable to secure a buyer. The only entity that had expressed a serious continuous interest in the property was a for-profit boarding school. On December 12, 2016 the EDC voted to apply for a change to the Regulations to remove the right to locate educational, religious and philanthropic uses in the IX Zone and the Interchange Zone (I-5).

On February 15, 2017 the Commission held a public hearing on the EDC's application to amend the Regulations. The hearing included testimony from EDC officials who testified that the EDC was concerned that educational, religious or philanthropic uses are often tax exempt and the town already has significant tax exempt property. In addition, the EDC officials offered evidence from other towns of industrial properties which have been purchased by tax exempt educational institutions. The officials pointed out that taxpayers had invested millions of dollars in road and utility infrastructure in both industrial zones. They also referred to the Plan of Conservation and Development (PCD) recently adopted by the Town and that only 13% of Town land is available for industrial uses and that keeping industrial uses was important for the Town and its tax base.

The Town Planner also testified at the hearing. She pointed out that educational,

religious and philanthropic uses were not added to the two industrial zones until 1991, and that the amendment was made without any real discussion by the Commission because someone wanted to put a school in the IX Zone. She agreed with the EDC that educational, religious and philanthropic uses are inconsistent with the intention of the two zones and are permitted in almost every other zone in Town.

The original plaintiff's attorney, Diane Whitney, outlined the efforts which have been made to sell the property to an industrial user. Attorney Whitney argued that the value of the property would be reduced if it could not be sold for an educational, religious or philanthropic use. The school interested in buying the property was a for-profit entity and would pay taxes to the Town. The proposed change would prohibit the original plaintiff from leasing the property to a school even though the plaintiff would remain liable to pay property taxes. Attorney Whitney questioned whether the change is in conformity with the most recent PCD which encourages more flexible uses in industrial zones. Finally, she presented the issue of whether protection of the tax base is a valid goal of zoning.

Following the hearing, the Commission voted 4-1 to approve the zoning amendment because: "religious, educational, and philanthropic uses in our IX and I-5 Zones are inconsistent with the purposes of the Zone and inconsistent with our Plan of Development subject to, so the comments from the General Manager Wallingford Education Division dated January 10, 2017."

The elimination of educational uses from the IX Zone ended the plaintiff's negotiations with the private school for purchase of the property. The motion to substitute plaintiffs filed after the trial states that the subsequent plaintiff acquired the property on February 12, 2018 and that it simultaneously acquired by assignment all of the original plaintiff's "rights, claims, demands,

title, interest, remedies and privileges in and under" this action. There is no evidence before the court as to the nature of the business conducted by the subsequent plaintiff or the terms of the sale of the property.

Additional facts concerning the contents of the Record will be given in the Discussion section of this memorandum of decision.

II. Aggrievement

"[P]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal. It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Citations omitted; internal quotation marks omitted). *Harris v. Zoning Comm'n*, 259 Conn. 402, 409 (2002). "Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it. (Citations omitted) *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals*, 266 Conn. 531, 538-39 (2003).

"The fundamental test by which the status of aggrievement is determined encompasses a well-settled twofold determination. First, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision. Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest has been adversely affected." (Internal quotation marks. Citations omitted.) *Quarry Knoll II Corp.* v. *Planning & Zoning Commission*, 256 Conn. 674, 702 (2001).

The subsequent plaintiff now owns the 180 acres of land in the IX Industrial zone. At the time of the zoning amendment the original plaintiff was attempting to sell the property and was experiencing difficulty in finding an industrial buyer. The property is now owned by the subsequent plaintiff which will be subject to the same difficulties. The elimination of religious, educational and philanthropic uses from the IX Zone will prevent the sale of the property to a boarding school or to any other religious, educational or philanthropic entity. There is a possibility, as distinguished from a certainty, that the subsequent plaintiff has been specially and injuriously affected by the decision by limiting its ability to use, sell or rent the property. The subsequent plaintiff is aggrieved by that portion of the amendment relating to the IX Zone where its property is located. On the other hand, the subsequent plaintiff owns no property in the I-5 Zone and is unaffected by the change in that zone. Therefore, the subsequent plaintiff is not aggrieved by that portion of the amendment relating the I-5 Zone.

III. Standard of Review

A zoning commission acts in a legislative capacity when it writes or amends it regulations or zoning map. *D & J Quarry Products, Inc.* v. *Planning & Zoning Commission*, 217 Conn. 447, 450 (1991). "Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change. . . . The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader that of an administrative board, which serves a quasi-judicial function. This legislative discretion is wide and liberal, and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally. Zoning must be sufficiently flexible to meet the

demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. The responsibility of meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. Within these broad parameters, the test of action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan, and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2." protect *Hamden/North Haven for Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 543-44 (1991).

"When a zoning commission makes a change of zone, it is required to give reasons for its action. The zone change must be upheld if any of the reasons given for it by the commission are valid, reasonably supported by the record, and pertinent to the considerations which the commission was required to apply under the zoning regulations. The upgrading of a zone to a more restrictive classification which is in the interest of the community is almost always upheld. Only the reasons given by the commission count and the court will not consider the reasons stated on the record by members for their individual votes." (Supporting footnotes omitted). R. Fuller, *Connecticut Practice Series: Connecticut Land Use Law and Practice* (4th Ed. 2015) § 33, p. 266.

IV. Discussion

The first argument in the original plaintiff's brief (now adopted by the subsequent plaintiff) is that there is no support in the Record for the Commission's decision. The subsequent plaintiff argues that the reasons given by the Commission have "absolutely nothing to back them

up." The Commission gave two reasons for its decision: (1) religious, educational, and philanthropic uses in the IX and I-5 Zones are inconsistent with the purposes of the Zone, and (2) religious, educational, and philanthropic uses in the IX and I-5 Zones and are inconsistent with the Plan of Development. First, the court will examine these reasons to see if there is support in the Record for either or both reason. Next, the court will determine if either one or both reasons conform to the Wallingford comprehensive plan and are pertinent to the considerations which the commission was required to apply under the Regulations.

In support of the reasons given for approval of the amendment, the Commission argues that the purpose of the IX Zone is inconsistent with religious, educational and philanthropic uses. The Record of the public hearing includes testimony from Tim Ryan, Economic Development Specialist for the Town. He pointed out that the purpose of the IX Zone (known as the Industrial Expansion District) as stated in the Regulations is to provide suitable locations for industrial and office uses on or near major streets. Mr. Ryan testified that religious, educational, and philanthropic uses are outside of the stated purposes of both zones. He testified that Wallingford taxpayers have invested millions of dollars in road and utility infrastructure in the IX Zone in anticipation of the tax revenue which will accrue from industrial and offices uses. He pointed out that philanthropic, educational, and religious uses frequently are exempt from taxation, thereby frustrating the Town's plan to recoup its investment. He also read from the most recent Plan of Conservation and Development: "Industrial and commercial land is in relatively limited supply in Wallingford with just 4 percent in commercial use and 13 percent in industrial use." He advised the Commission that supporting the elimination of philanthropic, educational and religious uses will increase land reserved exclusively for industrial and commercial use and will

make the two zones more consistent in maximizing the opportunity for tax revenue.

The Record also includes the testimony of Kacie Costello, Wallingford Town Planner. She provided the documented history of the two zones going back to 1958. At that time, there was no provision for philanthropic, educational or religious uses in the two zones. No changes were made until 1991 when the Regulations were amended to add philanthropic, educational and religious uses to the IX and I-5 zones because someone wanted to put a school in the IX Zone and there was apparently no opposition at that time. Ms. Costello pointed out that these uses are permitted in all other zones in Town.

The subsequent plaintiff argues that the testimony from these two witnesses is insufficient to support the reasons given by the Commission for its decision . This argument is rejected. Commission had sufficient evidence to conclude that the "philanthropic, educational and religious use" language added to the Regulations in 1991 is inconsistent with the stated purpose of the I-X zone. The name of the IX Zone alone–Industrial Expansion District–is inconsistent with religious, educational and philanthropic uses which are clearly not industrial. Also, Section 4.9 of the Regulations specifically states that the purpose of the "Industrial Expansion (IX) District is "To provide suitable locations for industrial and office uses on or near major streets." Philanthropic, educational and religious uses are certainly not industrial. Nor was it unreasonable for the Commission to conclude that religious, educational and philanthropic uses are not office uses. Many of the activities of those uses do not involve sitting in an office. For these reasons, the court finds that there is evidence in the Record which supports the Commission's first reason for approving the amendment.

The Commission's second reason is also supported by the Record. Further supporting

information is not necessary to read the language of the Plan of Conservation and Development and conclude that elimination of "philanthropic, educational and religious" uses from the IX Zone will help maintain the land available for industrial and commercial uses. The testimony of the Town's witnesses concerning the contents of the Regulations and the Plan of Conservation and Development together with inclusion of these documents in the Record are sufficient documentation to support the second reason given by the Commission that religious, educational and philanthropic uses are inconsistent with the Plan.

Next, the court must determine whether the amendment conformed to the town's comprehensive plan. "In the absence of a formally adopted comprehensive plan, a town's comprehensive plan is to be found in the scheme of the zoning regulations themselves. A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties. The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven for Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 551 (1991). The reasons given by the Commission both conform to the Wallingford comprehensive plan of creating an industrial district which will separate industrial uses from those found in other zones. This general plan advances the best interests of the entire community.

Next, the court will determine if either one or both reasons given by the Commission is pertinent to the considerations which the commission was required to apply under the

Regulations. A change in zoning regulations is valid if it has a rational relationship to the legitimate police powers set forth in the enabling statute, General Statutes § 8-2. *Builders Service Corporation, Inc.* v. *Planning and Zoning Commission of Town of East Hampton*, 208 Conn. 267, 283 (1988). The change need only meet one of the factors in § 8-2. *Protect Hamden/North Haven from Excessive Traffic and Pollution, Inc. v. Planning and Zoning Com'n of Town of Hamden*, 220 Conn. 527, 547 (1991). These factors include the use of structures and land for trade and industry as well as conditions to protect the public health, safety, convenience and property values. The Commission was within its right to determine that limiting the uses in the IX Zone to industrial and commercial was necessary to protect the public health and property values in the Town. "Whether the times and conditions require legislative regulation, as well as the degree of that regulation, is exclusively a matter for the judgment of the legislative body . . . . Courts can interfere only in those extreme cases where the action taken is unreasonable, discriminatory or arbitrary." (Citations omitted) *Builders Service Corporation* v. *Planning & Zoning Commission*, 208 Conn. 267, 289 (1988).

Finally, the court is mindful of the limited role it plays in reviewing the legislative actions of a zoning commission. "We have often articulated the proper, limited scope of judicial review of a decision of a local zoning commission when it acts in a legislative capacity by amending zoning regulations. . . . Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change." The court will not second-guess the Commission in its determination that time, experience and responsible planning dictate that the

IX Zone should be amended to eliminate philanthropic, educational and religious uses. The Commission did not act arbitrarily or in abuse of its discretion. The appeal is dismissed.

BY THE COURT,

John W. Pickard
Judge Trial Referee